THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.25403 of 2007

Between:

Gaddam Uppalaiah.

.. PETITIONER

and

The District Collector and others.

.. RESPONDENTS

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THE HON'BLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No.25403 of 2007

ORDER:

Heard the learned counsel appearing for the petitioner, the learned Government Pleader appearing for respondents 1 and 2, the learned Standing Counsel appearing for the 3rd respondent and Sri D.Y.N.L.N.Charyulu, the learned counsel appearing for the 4th respondent.

This writ petition has been filed seeking a Writ of Mandamus declaring the action of the 3rd respondent in issuing impugned notice, dated 19-11-2007, as illegal and arbitrary.

It is the case of the petitioner that the 3rd respondent issued notice on 19-11-2007 intimating the petitioner that he has got third child within one year of the Amendment made to the A.P.Panchayat Raj Act, 1994, (for short "the Act") and therefore, he incurred disqualification under Section 19(3) of the Act to continue as a Sarpanch of Bandaramaram Village, Tuntaturthy Mandal, Nalgonda District. The Act came into force from 30-05-1994 and whoever gets a third child after expiry of one year, they are being disqualified to elect as Sarpanch. Therefore, there is a prohibition to have a third child after 30-05-1995. It is stated that the petitioner has got third child on 01-02-1994. But, according to the 4th respondent-complainant, the third child of the petitioner was born on 10-08-1995 i.e., after prohibited date of 30-05-1995. The District Collector (Panchayat Wing), Nalgonda, through his proceedings in Memo No.523/07-B1 (Pts), dated 17-11-2007, directed the Panchayat Secretary, who is the Executive Authority of the Gram Panchayat Bandaramaram, Tungaturthy Mandal Nalgonda District, to give intimation of such allegation to the petitioner through the District Panchayat Officer, Nalgonda, duly verifying the correctness of the allegations made against the petitioner with regard to disqualification in accordance with the provisions of Section 19(3) of the Act. Accordingly, the 3rd respondent issued impugned notice, dated 19-11-2007, stating that the petitioner has got third child on 10-08-1995 and therefore, he has duly incurred disqualification under Section 19(3) of the Act to continue as Sarpanch of the said Village.

If any person incurs disqualification under Section 19(3) of the Act, the

Competent Authority to decide the question of disqualification is only the District Court on an application made by an aggrieved party. Therefore, the impugned notice cannot be treated as an order of disqualification, but it shall be treated only as an intimation that the petitioner incurred disqualification. It is also made clear that it is open for any aggrieved party to apply to the District Judge to decide the question of disqualification. Even, if the petitioner does not wish to question the said notice, he cannot be prevented from functioning as a Sarpanch of the said Village. Even, if the aggrieved party approaches the District Judge, pending decision, the petitioner is entitled to act as a Sarpanch.

Having regard to the facts and circumstances of the case, the respondents are directed to treat the impugned notice issued by the 3rd respondent through proceedings, dated 19-11-2007, as an intimation of incurring disqualification, but, not an order of disqualifying him to continue as a Sarpanch. Further, the respondents are directed not to prevent the petitioner from acting as a Sarpanch or interfere with any manner till the District Judge decides the question of disqualification on an application, if any filed by an aggrieved party.

Accordingly, the writ petition is disposed of. There shall be no order as to costs.

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29-11-2007

Note:

Issue C.C. in three days

(B/o)

Prv